REGD. GOA - 5

Panaji, 15th September, 1983 (Bhadra 24, 1905)

SERIES II No. 24

OFFICIAL GAZETTE

GOVERNMENT OF GOA, DAMAN AND DIU

GOVERNMENT OF GOA, DAMAN AND DIU

Department of Personnel and Administrative Reforms

Order

No. 3/17/74-PER (Vol. II)

Shri R. G. Jatkar, appointed under Rule 25(1)(b) of the Goa, Daman and Diu Civil Service Rules, 1967 to hold the Grade II duty post of the service, who is functioning as Director (Admn.), Electricity Department on ad-hoc basis, is posted as Director of Information on ad-hoc basis for a period of six months in the first instance with immediate effect.

2. Consequently, Shri N. Rajasekhar, Grade I officer of Goa, Daman and Diu Civil Service and present Director of Information, is transferred and posted as Project Officer, Rural Industries Project, Directorate of Industries and Mines, Panaji.

By order and in the name of the Administrator of Goa, Daman and Diu.

N. P. Gaunekar, Under Secretary (Personnel).

Panaji, 7th September, 1983.

Order

No. 3/1/80-PER

Shri S. K. Kain, IPS, Superintendent of Police, Goa, Daman and Diu is nominated as Security Liaison Officer (Goa Police) for CHOGM with immediate effect. However, he shall draw his pay against the post of Superintendent of Police, Goa, Daman and Diu.

2. Shri A. D'Souza, IPS, Superintendent of Police (CID), shall look after the charge of Superintendent of Police Goa, Daman and Diu in addition to his own duties.

By order and in the name of the Administrator of Goa, Daman and Diu.

N. P. Gaunekar, Under Secretary (Personnel).

Panaji, 7th September, 1983.

Planning Department

Science, Technology & Environment Department

Order

No. 1-5-83-STE

Read: Notification No. 4-3-83-LAWD dated 22-4-83 from the Local Administration & Welfare Department, Secretariat, Panaji regarding constitution of "Ecological Control Committee".

Government is pleased to appoint Secretary, Town & Country Planning-cum-Development Commissioner as a Member on the Ecological Control Committee with immediate effect.

By order and in the name of the Administrator of Goa, Daman and Diu.

P. R. Joshi, Under Secretary (STE).

Panaji, 8th September, 1983.

Local Administration and Welfare Department

Office of the Asstt. Registrar of Cooperative Societies

No. 7-6-78/ARSZ/LQD

Read: — This office order No. 7-6-78/ARSZ/LQD/4243/ /82 dated 6-8-1982 appointing Shri C. G. Konnuri, Special Recovery Officer, Coop. Societies, as liquidator of Bhumipurush V. K. S. S. Society Ltd., Fatorpa--Quepem-Goa.

Order

In partial modification to this office order cited above Shri S. V. Kale, Special Recovery Officer, is hereby appointed as liquidator of Bhumipurush V. K. S. S. Society Ltd., in place of Shri C. G. Konnuri, with immediate effect.

M. A. Desai, Asstt. Registrar of Coop. Societies, South Zone.

Margao, 29th July, 1983.

No. 7-42-70/ARSZ/LQD

Read: This office order No. 7-41-70/ARSZ/LQD/4242/82 dated 6-8-1982 appointing Shri C. G. Konnuri, S. R. O. Coop. Societies, South Zone, Margao as Liquidator of Margao Charmakar Kamgar Sahakari Utpadak Society Ltd., Margao.

Order

In partial modification of this order mentioned above Shri S. V. Kale, Special Recovery Officer, South Zone, Margao is hereby appointed as liquidator of the Margao Charmakar Kamgar Sahakari Society Ltd., Margao in place of Shri C. G. Konnuri, with immediate effect.

M. A. Desai, Asstt. Registrar of Coop. Societies, South Zone.

Margao, 29th July, 1983.

No. 7-46-78/ARSZ/LQD

Read: This office order No. 7-46-78/ARSZ/LQD/5994/82 dated 26-10-1982 appointing Shri C. G. Konnuri, Special Recovery Officer, Coop. Societies, South Zone, Margao as a liquidator of Quepem Block Poultry Coop. Society Ltd., Quepem in place of Shri U. P. Gaonkar.

Order

In partial modification to this office order referred to above Shri S. V. Kale, Special Recovery Officer, is hereby appointed

as liquidator of Quepem Block Poultry Coop. Society Ltd., Quepem vice Shri C. G. Konnuri, with immediate effect.

M. A. Desai, Asstt. Registrar of Coop. Societies, South Zone.

Margao, 29th July, 1983.

No. 7-2-78/ARSZ/LQD/Service

Read: Order No. 7-2-78/ARSZ/LQD/4680 dated 2-9-1982 appointing Shri C. G. Konnuri, Special Recovery Officer, Coop. Societies, South Zone, Margao as liquidator of Shri Shidheshwar V. K. S. S. Society Ltd., Bhati-Sanguem-Goa.

Order

In partial modification to this office order mentioned above Shri S. V. Kale, Special Recovery Officer, South Zone, Margao is hereby appointed as liquidator of Shri Shidheshwar V. K. S. S. Society Ltd., Bhati-Sanguem in place of Shri C. G. Konnuri with immediate effect.

M. A. Desai, Asstt. Registrar of Coop. Societies, South Zone.

Margao, 29th July, 1983.

Notification

In exercise of the powers vested in me under Section 9(1) of the Maharashtra Cooperative Societies Act, 1960 as applied to the Union Territory of Goa, Daman and Diu, New Goa High School Employees' Cooperative Credit Society Ltd., Mapusa-Goa is registered under Code Symbol No. RES-(a)-6-/NZ/GOA.

Sd/-.

(D. V. Sathe), Asstt. Registrar of Coop. Societies, North Zone,

Mapusa, 30th July, 1983.

Certificate of Registration

New Goa High School Employees' Cooperative Credit Society Ltd., Mapusa-Goa has been registered on 30th July, 1983 and it bears registration Code Symbol No. (RES-(a)-6-/NZ/GOA and it is classified as a Resource Society under Sub-Classification No. 8(a) Credit Resource Society in terms of Rule No. 9 of the Cooperative Societies Rules 1962 for the Union Territory of Goa, Daman and Diu.

Sd/-.

(D. V. Sathe), Asstt. Registrar of Coop. Societies, North Zone,

Mapusa, 30th July, 1983.

Notification

In exercise of the powers vested in me under Section 9(1) of the Maharashtra Cooperative Societies Act, 1961 as applied to the Union Territory of Goa, Daman and Diu, Satyam Sahakari Audyogik Utpadak Society Ltd., Penha de France, Bardez-Goa is registered under code Symbol No. PRD-(a)-5/NZ/GOA.

Sd/-.

(D. V. Sathe), Asstt. Registrar of Coop. Societies, North Zone,

Mapusa, 4th August, 1983.

Certificate of Registration

Satyam Sahakari Audyogik Utpadak Society Ltd., Penha de France, Bardez-Goa has been registered on 17th August, 1983 and it bears registration code Symbol No. PRD-(a)-5/NZ/GOA and it is classified as a Producers' Society under Sub-Classification No. 7(a) Industrial Producers' Society in terms of Rule 9 of the Cooperative Societies Rules, 1962 for the Union Territory of Goa, Daman and Diu.

Sd/-.

(D. V. Sathe), Asstt. Registrar of Coop. Societies, North Zone,

Mapusa, 17th August, 1983.

Revenue Department

Notification

No. RD/END/263/79

Read: Government Notification No. RD/END/263/79 dated 1-12-1981, Addendum No. RD/END/263/79 dated 12-2-82 and subsequent Notification No. RD/END/263/79 dated 26-6-1982 and Notification No. RD/END/263/79 dated 6-1-1983 and Notification No. RD/END/263/79 dated 28-6-1983.

Government is pleased to extend the term of the Committee constituted under the Notification of even number dated 16-8-1983 upto 16-2-1984.

The Committee should submit the report by the said date.

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

A. S. Ingle, Under Secretary (Rev.-I).

Panaji, 3rd September, 1983.

Notification

No. 22/88/81-RD

Whereas by Government Notification No. 22/88/81-RD dated 14-1-82 published on page 535 of Series II, No. 44 of the Official Gazette, dated 1-2-82 and Corrigendum No. 22/88/81-RD dated 23-9-82 published on page 365, Series II, No. 27 of the Official Gazette dated 30-9-82 it was notified under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act") that the land, specified in the schedule appended to the said Notification (hereinafter referred to as the "said land") was likely to be needed for the public purpose viz. for expansion of Marine Workshop at Betim (additional area).

And Whereas the appropriate Government (hereinafter referred to as "the Government ") is satisfied after considering the report made under sub-section (2) of Section 5A of the said Act, that the said land specified in the schedule hereto is needed to be acquired for the public purpose specified above.

Now, Therefore, the Government is pleased to declare under the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government is also pleased to appoint under clause (c) of Section 3 of the said Act, the Deputy Collector, Goa North Division, Panaji, to perform the functions of a Collector for all proceedings hereinafter to be taken in respect of the said land, and to direct him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the said Deputy Collector, Goa North Division, Panaji, till the award is made under Section 11.

SCHEDULE

(Description of the said land)

Sr. No.	Taluka	Village/Ward	Plot No.	Sub-Div. No.	Name of the person believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
1.	Bardez	Penha de-França	1	67/1	Manohar Sinai Bhandiye.	825.00
					Boundaries: North: Road, Sy. No. 67/1. South: Sy. No. 67/1. East: Sy. No. 67/1. West: Land acquired by Captain of Ports.	
					Total	825.00

By order and in the name of the Lt. Governor of Goa, Daman & Diu.

A. S. Ingle, Under Secretary (Revenue — I).

Panaji, 3rd September, 1983.

Public Health Department

Order

No. 5/27/80-PHD

The services of Dr. N. V. Raikar, Medical Officer, under the Directorate of Health Services, Panaji are placed at the disposal of the Home Department for appointment on ad-hoc basis by transfer on deputation as Police Medical Officer in the scale of Rs. 700-1300 plus N.P.A. as per rules in the office of the Inspector General of Police, Panaji.

2. The appointment of Dr. N. V. Raikar, as Police Medical Officer to the aforesaid Department will be governed by the terms and conditions of deputation in Government of India, Ministry of Finance (Department of Expenditure) Memo No. 10(24)-E-III/60 dated 4-5-61 as amended from time to time.

3. The period of deputation of Dr. N. V. Raikar shall be initially for six months on ad-hoc basis, from the date of his joining the post.

By order and in the name of the Administrator of Goa, Daman and Diu.

S. V. Bhadri, Under Secretary (Health).

Panaji, 7th September, 1983.

Industries and Labour Department

Order

No. 28/2/79-ILD

The following Awards given by the Industrial Tribunal, Goa, Daman and Diu are hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Administrator of Goa, Daman and Diu.

S. D. Sadhale, Under Secretary (Industries and Labour).

Panaji, 22nd August, 1983.

IN THE INDUSTRIAL TRIBUNAL GOA, DAMAN AND DIU, PANAJI-GOA

(Before Dr. Renato de Noronha, Hon'ble Presiding Officer)

Reference No.: IT/48/82

1. 56 Workmen, rep. by The Goa Dock Labour Union, Vasco da Gama. —Party I

V/s.

1. M/s. Tolani Private Ltd. —Party II

Workmen/Party I represented by Adv. K. P. V. Menon.

Employer/Party II represented by Shri Ramesh Desai, Labour Advisor.

Panaji, Dated: 5-8-1983

AWARD

In this reference made by the Government of Goa, Daman & Diu, to this Tribunal for the adjudication of an industrial dispute between the above parties, the schedule attached to the Order of Reference, which is dated 24-9-1982, reads as follows:

"Whether the action of the management of M/s. Tolani Pvt. Ltd., Vasco-da-Gama, Goa in terminating the services of 56 workmen whose names are listed in the Annexure with effect from 7-7-1982 on the grounds of closing their establishment at Zorinto, Sancoale-Goa, is justified?

If not, to what relief the said workmen are entitled to?"

2. The case of the Workmen's Union, in short, is that the Management of the employer has created this dispute by granting certain special privileges to some workers by their circular dated 5-2-1982; extra ordinary benefits to some workers to the tune of Rs. 150/- per month, per worker, were granted without following any procedure prescribed by law and inspite of the revised wage settlement still in force binding both the parties; on the announcement of this special increment to certain workers, industrial unrest started in the workshop as the workers felt that Management's action was not only unfair but also against the principles of natural justice.

On 6-5-1982, the Management sent a notice to the Government alongwith form 'Q', informing of the closure of the establishment under section 25FFA of the Act. The Union sought the intervention of the Labour Commissioner when all direct negotiations with the Management failed. When the Labour Commissioner saw that he could not bring the parties to any agreement, he submitted his failure report on 9-7-1982 to the Secretary, Industries and Labour.

Union's contention is that the Management has deliberately declared lock out and the closure is absolutely malafide and only to victimize the workmen who did not accept the Management's arbitrary decision. It is submitted that the reasons, mentioned in form 'Q', which accompanied the notice sent to the Government, to justify the closure are not all true. It is stated that the Management has not closed down their establishment but only locked it out on the pretext of closure with the malafide intention to harass and victimize the workmen. It is prayed that it may be declared that the workmen are entitled to get their employment back with continuity of services.

3. In their written statement, the employer has stated that, pursuant to the notice sent to the Government declaring their intention to close down its barge repair workshop at Zorinto, Sancoale, w.e.f. from 7-7-1982, they also issued individual notices to each workman, informing him that his services would stand terminated by way of retrenchment, effective from 7-7-1982, and that, on 5-7-1982, he would be paid all the legal dues by way of final settlement alongwith the certificate of service. As some of the workers were entering the workshop premises forcibly, after duty hours, and sleeping there, the Union was informed by letter dated 24-6-1982, a copy of which was endorsed to the Labour Commissioner. Conciliation Proceedings before the Labour Commissioner were going on and, during the said period, the workmen were wrongfully entering the workshop premises and staying there beyond duty hours, as a result of which the Management was forced to institute Civil proceedings restraining them from entering the workshop premises after normal working hours. The Labour Commissioner realized that no settlement was possible and submitted a failure report to the Government and hence this reference.

It is contended that the reference made by the Government is bad in law and not maintainable for the following reasons:

i) The order has been issued by the Government without jurisdiction or in excess of jurisdiction;

ii) It has been issued without application of mind, as the Government has not taken into account the true legal position in respect of the termination of service of the workman arising out of closure;

iii) The Government cannot convert a dispute between the employer and their workmen into an industrial dispute in the matter of termination of services of the workmen arising out of closure;

iv) The reference is without bonafide reasons, since it is expected that the Government is aware that the subject matter of closure, the reasons for such closure and consequent retrenchment are not matters within the ambit of industrial adjudication, as per the established law; and

v) This Tribunal has no jurisdiction to entertain the dispute pertaining to closure and/or motive behind such closure and/or consequences arising out of such closure.

4. In their additional written statement, the Company deals with the Union's contentions on merits, which I will not reproduce here, as, at this stage, we are concerned only with the preliminary objections filed by the Employer/Company. The Union has also filed its rejoinder, in so far this additional written statement is concerned.

5. The following preliminary issue was framed by the Tribunal, on which the representatives of both the parties advanced their arguments.

"Whether the Employer proves that the Order of Reference is bad in law and not maintainable for the reasons mentioned under letters (a) to (e) of the Written Statement of the Employer?"

6. The Ld. Rep. of the employer, in his oral arguments, has not pressed the ground (ii) as reproduced in para 3 above and, regarding other grounds mentioned in the said para, it is his contention that, once the fact of closure is not disputed by the Union, the reasons behind such closure and the consequences arising out of it are not open to the scrutiny of the Tribunal. He has relied for this purpose on various rulings of the Supreme Court and High Courts to which we shall refer in the course of this Order.

7. According to the employer's representative, the fact of closure is not disputed:

i) Because the order of reference itself refers to it while stating that the termination of services of the workman is *on the ground of closure;*

ii) The letter dated 17-5-1982 addressed by the Union to the Labour Commissioner (annexure 'H' to the Claim Statement) discusses only the correctness of the motives behind the closure itself, which is admitted by the Union, as it is shown from the following passages of the said letter: "It is rumoured that after this closure of the establishment is effected, the Management wants to run their workshop on an absolutely contract basis for their convenience" ... "Therefore, we feel that this proposed closure is to victimize our workmen and also to enable the Management to start contract work in the same premises for repairing their barges in particular".

8. On the other side, it is argued by the Union's rep. that the fact of closure is not admitted by the Union in the letter referred to above by the employer, nor by the Government in the Order of reference. This order would refer to the ground of termination as being closure and the reading of the entire para of the said letter of the Union (Annex. 'H') makes it clear that the Union has not admitted a complete closure. It is submitted that entry No. 10 of the 3rd schedule of the Act refers to the retrenchment of workmen and closure of the establishment and, therefore, the closure of the establishment can be subject matter of adjudication by the Industrial Tribunal under Section 7A of the Act. He has also relied on some rulings of the Supreme Court and High Courts.

9. Form 'Q' which accompanied the letter of the employer dated 6-5-1982 sent to the Government (vide annex. 'G' to the claim statement) refers to the closure of the workshop of the employer at Zorinto, Sancoale, with effect from 7-7-1982. The order of reference is dated 24-9-1982. In its statement of claim filed on 5-11-1982 i.e. about 4 months after the date of the proposed closure of the workshop by the employer, the Union has stated at page 4 as follows: "It is the contention of the Union that the Management deliberately declared the lock out *and the closure is also malafide* and is only to victimize the workmen who did not accept the Management's arbitrary decision" and further on page 6 "the Management has not closed down their establishment but *it is only with a malafide intention* to harass and victimize the workmen the *lock out is declared* in the pretext of closure." From the above passages it is clear that the employer's workshop is now closed, as per the notice given by the employer to the Government. Whether such closure is only a lock out declared by the Management with a malafide intention to harass and victimize the workmen, as contended by the Union, or it is a real closure, as contended by the Management, it is too early to judge. No evidence has been advanced by the Union to show that, after the closure, the employer has been working the establishment in some other form so as to make out a case that the alleged closure is not a real closure but a farce or pretence.

10. Shri Ramesh Desai, the Ld. Rep. of the employer has relied upon the following rulings of the Supreme Court:

i) Tata Magar foundary Company Ltd. and their workmen reported in 1970 I LLJ page 348.

In this ruling, it was held that if the closure is of business itself and not of the place of the business, the motive for such closure was immaterial provided the closure was an effective one.

ii) Workmen of the Straw Board Manufacturing Company Ltd. and M/s. Straw Board Manufacturing Company Limited reported in 1974 I LLJ page 499.

In this ruling, the Supreme Court has held, inter alia, that the workman cannot question the motive of closure when it has taken place infact and that the factum of a genuine closure admitted or proved is outside the pale of industrial adjudication, not partaking or fulfilling the contents of an industrial dispute within the meaning of Section 2(K) of the Act.

iii) Pottery Mazdoor Panchayat V/s. Perfect Pottery Co. Ltd. reported in 1979 SCC (Labour & Service) page 340.

I shall refer to this ruling in some detail because the controversy between the parties there, as in our case is very similar and so it can help us to decide our case. There were two references in that case, one of the Madhya Pradesh State Government under Section 51 of the State Act to the Industrial Court reading as follows:

"Whether the proposed closure by the Management of the Perfect Pottery Private Limited, Jabalpur of their Pottery Factory at Jabalpur with effect from July 1st 1967 is proper and justified? and to what retrenchment compensation are the employees entitled if it is decided that the proposed closure is proper and justified."

The other reference was of the Central Government to the Central Government Industrial Tribunal and it reads as follows: "Whether the employers in relation to the Polly Pathur Clay Mines of Perfect Pottery Company Ltd., Jabalpur were justified in closing down the said mine and retrenching the following 81 workers w.e.f. July 1st 1967. If not, to what relief are the workmen entitled."

The respondents, who were the Perfect Pottery Company Ltd., and another contended in both the references that the respective Tribunals had no jurisdiction to consider the question regarding the propriety or justification of the Management decision to close down the business.

The appellants' case was that the so called closure of the business was merely a camouflage and, in substance and essence, it was a lock out. In support of this contention, the appellants pleaded that the respondents were making large profits in its business, that the respondents were making large profits in its business, that no economic or financial reasons could have impelled it to close down its business and the true reason of the supposed closure was to victimize the workers for their trade union activities and to defeat the rights which flowed out of the Award given by the Industrial Court, Madhya Pradesh on 16-3-1966, under which the workers were entitled to receive enhanced dearness allowance.

The two Tribunals came to contrary conclusion on the principal question as to whether they had jurisdiction to enquire in the propriety of or justification for the closure. The Central Government Industrial Tribunal-cum-Labour Court held that it had no jurisdiction to inquire whether the decision of the Management to close down the business was proper and justified, but it was entitled to consider whether infact the business was closed. On its side, the Industrial Court held that it had no jurisdiction either to inquire into the propriety of the closure or, because of the terms of reference, to consider whether there was or not a real closure. The High Court, where the matter went in appeal, held that the jurisdiction of the Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and to matters incidental thereto and it cannot go beyond the terms of reference made to it. The Supreme Court, while upholding this view of the High Court, said: "The very terms of the references show that the point of dispute between the parties was not the fact of the closure of its business by the respondent but the propriety and justification of the respondent's decision to close down the business. That is why the references were expressed to say whether the proposed closure of the business was proper and justified. In other words, by the references the Tribunals were not called upon by the Government to adjudicate upon the question as to whether there was in fact a closure of business or whether under the pretence of closing the business the workers were locked out by the Management. The references being limited to the narrow question as to whether the closure was proper and justified, the Tribunal by the very terms of reference had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the Management."

Then the Ruling goes on saying that this conclusion is supported not only by the terms of reference but also by the history of the dispute of the various documents on record indicating that the dispute between the parties related not to the question as to whether the business infact was closed by the Management but whether there was any justification or propriety on the part of the Management in deciding to close down the business.

It is to be noted that, in this case before the Supreme Court in which the ruling was given, the Union, in its letter to the Regional Labour Court, Jabalpur, had impliedly admitted the validity of the decision of the Management to close down the business since its only grievance was the non payment of retrenchment compensation alongwith notice, thereby violating the provisions of the Act. It was also alleged in this letter that "the closure of the mine and the factory is malafide" and after stating the reasons for such closure the said para ends by stating that the Union was of the opinion that the closure was not for business reasons but was a malafide decision taken in order to drive the Union out of existence and to cheat the workers of their lawful dues.

11. The details of the case of Pottery Mazdoor reproduced above go to show that it is much similar to our case.

In the instant case, the Union, after receiving the notice of closure of the establishment by the Management, addressed a letter to the Labour Commissioner on 17-5-1972 a copy of which was filed by the Union as annex. 'H' to its claim statement in which, after stating that the reasons given by the Management for closing their establishment are not correct, the letter goes on as follows: "It is rumoured that *after the closure of this establishment is effected, the Management wants to run their workshop on an absolute contract basis for their convenience*" ... "therefore, we feel that this proposed closure is to victimize our workmen and also to *enable the Management to start contract work in the same premises for repairing their barges in particular*. This is an unfair practice and against the principles of natural justice."

12. This same stand the Union maintained before the Labour Commissioner on 30-6-1982 contending that the decision of the employer to close down the unit is unjustified and lacks bonafide. (vide annex. 'J' to the claim statement of the Union). The failure report submitted by the Labour Commissioner to the Government alongwith the minutes of the conciliation proceedings, a copy of which has been filed by the Union alongwith the statement of claim as annex. 'K', also reproduces the above position of the Union vis-a-vis the decision of the Management to close down the establishment.

13. It is for the first time in its statement of claim that the Union has taken the stand (vide paras 4 and 6) that the Management deliberately declared a lock-out in the pretext of closure (vide page 4 and 6 of the claim statement). Its earlier stand which, otherwise is not changed by the Union, is that the closure is malafide and only to victimize the workmen.

14. The issue whether the proposed closure of the establishment by the Management was a lock out or a real closure was not before the Government at the time of making the order of reference and, therefore, the Government could not apply its mind to it while referring the matter for the adjudication of this Tribunal. Hence, as in the case of Pottery Mazdoor before the Supreme Court, the very terms of reference show that the point of dispute between the parties was not the fact of closure of its establishment by the Management but the propriety and justification of the decision to close down the business.

15. It is well settled proposition that the jurisdiction of the Industrial Tribunal is limited to the points specially referred for its adjudication and to matters incidential thereto and it cannot travel beyond the terms of reference made to it.

As we said above, during the conciliation proceedings, the Union always challenged the reasons given by the Management to close down its establishment stating that the closure was not at all justified and was malafide only to victimize the workmen. The Union never took the stand, which it subsequently took in its statement of claim, that it was not a closure but a lock out under the pretext of closure. On the contrary, the contention of the Union at that time that *it was rumoured that, after the closure is effected, the Management wants to run their workshop on an absolutely contractual basis for their convenience and, therefore, the proposed closure is to victimize the workman and also to enable the Management to start contract work in the same premises for repairing their barges in particular,* would disprove their subsequent contention of lock-out.

16. In the rulings in the cases of Tata Nagar Foundary Co. Ltd. and workmen of Straw Board Managing Company Ltd., quoted in para 10 above, it was held by the Supreme Court that the motive for such closure was immaterial provided the closure was an effective one and the workmen cannot question the motives of closure when it has taken place infact.

17. This is also the stand I have taken while delivering my Award dated 27-7-1981 in reference No. IT/65/78 where the parties were the workmen of M/s. Chowgule and Co. Pvt. Ltd., and M/s. Chowgule & Company Pvt. Ltd., Mormugao Harbour, published in the Official Gazette dated 20-8-1981. The Ld. Rep. of the employer has also relied upon this award

in support of his view. In this award, I have referred to the various rulings of the Supreme Court and High Courts on this point, some of which have been also relied upon by the Ld. Rep. of the Union in this case.

18. It is an admitted fact that for the time being, there is a closure of the workshop of the employer. Whether such closure is a lock out under the pretext of closure or not is not within the terms of this reference to decide. It would also be premature to decide the said point as well as whether the closure is malafide or not because all would depend on the subsequent behaviour of the Management in the conduction of the business of its workshop.

19. In view of the above, my reply to the reference made by the Government is that the said reference is premature and not maintainable since the issue of termination of services on the ground of closure cannot be challenged by the workmen and, consequently, the Government has no jurisdiction to refer it for adjudication by the Industrial Tribunal. In so far the allegation of malafide of the closure is concerned, I am of the view that, in the absence of any evidence, on this point it is too early to judge such allegation at this stage.

In the circumstances of the case, I leave each party to bear its own costs.

Dr. Renato de Noronha
Presiding Officer
Industrial Tribunal

IN THE LABOUR COURT GOA, DAMAN AND DIU, PANAJI-GOA

(Before Dr. Renato de Noronha, Hon'ble Presiding Officer)

Application No.: LCC/27/74

1. Shri A. B. D'Souza
2. Shri Teophilo Gonsalves
3. Shri K. D. Prabhu
4. Shri F. M. D'Souza

— Applicants

V/s.

1. M/s. V. N. Bandekar &
2. M/s. Bandekar Parkot Shipping Private Limited

— Opponents

Applicant represented by Adv. A. Mashelkar

Opponent represented by Adv. H. R. Bharne

Panaji. Dated: 1-7-1983

AWARD

This is an application, initially filed by the above four applicants, claiming from the opponents their dues, as per the details given in the annexure.

2. Representative of Shri F. M. D'Souza, by his application dated 24-5-1975, requested the Court to delete his name from this application as a separate application filed by him in this connection was pending, and this request was granted by the court (vide Roznama of the proceedings dated 24-5-1975).

3. The applicant Teophilo Gonsalves died and the request of his heirs to be brought on record was dismissed by the court for reasons mentioned in its order dated 10-8-1981.

4. By order dated 3-9-1982, the application of the other two applicants was dismissed for default but regarding the applicant Prabhu, the ex-parte order dated 3-9-1982 was set aside by my order dated 10-11-1982 and he was allowed to continue with the proceedings.

5. The case of the applicant Prabhu, is that he was working for the opponent's company and his services were terminated on 1-1-1974 without payment of his dues, which, according to him, amounted to Rs. 2,476/16, as per the details given in the annexure to the application.

6. The opponent company, in its written statement, has raised the preliminary objection regarding the maintainability of the application and, on merits, stated that the services of the applicant and others were terminated w.e.f. 31-1-1974, after giving them notice on 31-12-1973. They were also given statement of dues in full and final settlement and asked to collect their dues, which they failed to collect. The applicant and others, although requested not to attend duties from 2-1-1974, continued to remain in the office premises for no reason. After the matter was taken up before the Labour Commissioner, the applicants collected all their dues, as per the statement of dues, in full and final settlement, being satisfied that their dues were properly calculated and issued an acknowledgement that they have no claim whatsoever against the opponent.

7. When the examination-In-Chief of the applicant Prabhu was in course, he moved an application for amendment of his original application which, after hearing both the parties, was dismissed by the Court by its Order dated 16-2-1983. The case was then posted for continuation of the applicant Prabhu's evidence but the latter failed to remain present on the date fixed and so his evidence was declared closed.

8. It was for the applicant Prabhu to prove his claim. However, he did not lead any evidence, except his own statement which, otherwise, is also incomplete and, since he did not submit himself for cross examination, the said statement is to be ignored.

9. In the absence of any evidence led by the applicant to prove his claim, his application cannot succeed. Hence, I pass the following order:

ORDER

This application, in-so-far applicant Prabhu is concerned, is hereby dismissed with Rs. 50/- as costs.

Dr. Renato de Noronha
Presiding Officer
Labour Court

IN THE INDUSTRIAL TRIBUNAL GOA, DAMAN & DIU, PANAJI GOA

(Before Dr. Renato de Noronha, Hon'ble Presiding Officer)

Reference No.: IT/53/78

1. Workmen — Party I

V/s.

1. M/s. Goa Instruments Industries — Party II

Employer/Party II represented by Shri Ramesh Desai, Labour Advisor.

Panaji. Dated: 3-8-1983

AWARD

This is a reference made to this Tribunal by the Govt. of Goa, Daman and Diu, by its Order No. IRM/CON(181)/77/ /IT-31/78 dated 10th August, 1978. The schedule annexed to the Order of Reference reads as follows:

"Whether the following demands of the workmen of M/s. Goa Instruments Industries, Mapusa Industrial Estate, are legal and justified

1. Demand for payment of gratuity at the rate of 15 days wages for each year of continuous service to the workmen who have put in one year's service, as a qualifying period;
2. Demand for 9 days casual leave per year;
3. Demand for 6 days sick leave per year;

If the answer be in the negative to what relief if any, are the aforementioned workmen entitled to?"

2. The Union filed its statement of claim, in which it is stated as follows:

The employer is a partnership firm, having its factory at Mapusa Industrial Estate. The firm is engaged in the manufacturing of sophisticated machinery and equipments like thermometers, etc. for which they employ highly skilled labour. Though the employers are a partnership firm, in actual fact it is functioning as a branch of the firm having its factories at Panvel, Maharashtra and is engaged in the manufacture of the same kind of goods as in the Mapusa factory and the partners of the employer firm are also the partners/Directors of the firm situated at Panvel.

The Union, by its letter dated 7-10-1977, submitted a Charter of Demands to the employers which included the referred demands to this Tribunal for adjudication. As the employer did not concede to the said demands, the Union approached the Labour Commissioner and, finally, due to the adamant attitude of the employers, the matter was referred by the Government for adjudication by this Tribunal.

Issue No. 1 for payment of gratuity is justified by the Union under Section 3 of the Goa, Daman & Diu Shops and Establishments Act, 1973, which gives this benefit to the workmen working in all commercial establishments, eating houses and residential hotels in this territory. It is submitted that the provisions of the said Act regarding gratuity are made applicable to the establishments wherein even one employee is employed and which are engaged in the manufacture of the same kind of goods which are manufactured by the factories. The said scheme is made applicable to many industrial establishment situated in the Mapusa Industrial Estate and employing less than 10 workers, due to the statutory provision of that Act. However, this benefit has been denied to the workmen of the employer in this case.

Issue No. 2 and 3, for casual and sick leave, are justified by the Union under the provisions of the same Act, which apply to all the commercial establishment which include industrial and engineering units.

3. The employer, in its written statement, challenged the locus standi of the Union, stating that it did not represent at all the workmen who are not the members of the said Union. On merits, it is stated that the so called industrial dispute is imaginary, because the employers are registered under the Factories Act, licence No. GOA 206 dated 5-6-1978 and follow all the Rules and Regulations mentioned in the Factories Act.

4. My Ld. Predecessor, Dr. Coelho, framed the following preliminary issue:

"Does the Employer/Party I, prove that the Goa Engineering and General Workers' Union is not an Union representative of its Workmen?"

5. Before the date of actual hearing, the Union's rep. withdrew from the proceedings and so notice was published in the local newspaper informing the workmen of this withdrawal and asking them to be present in this Tribunal at the time of the next hearing, the date and time of which were mentioned in the advertisement. On the date fixed, none were present for the Union and so a fresh date was given for ex-parte evidence. On this date, the Ld. Rep. for the employer did not press for the decision of the preliminary issue which was dropped. On merits, he led the evidence of Shri Manguesh Kulkarni, one of the trustees of the firm, looking after to its day to day administration. In his statement before the Tribunal, Mr. Kulkarni has stated that the firm has introduced gratuity under L.I.C. Group Gratuity Policy and given also 5 days casual leave per year to the employees. So far the demand for sick leave is concerned, it is his contention that the employees are covered under the E.S.I. Scheme and receive benefits under the said scheme. Since the firm is at infant stage, it has not yet introduced any sick leave.

6. This statement of the employer's witness has gone unchallenged for want of cross examination.

7. It was for the Union, who had submitted the Charter of Demands to the employer, to prove before the Tribunal that the said demands are justified. The Union, however, did not lead any evidence in support of its contention. On the other side, the employer has led its evidence to support the system which is followed at present, which evidence has not been rebutted by the Union for want of cross examination.

8. In view of the above, I reply to the reference as follows:

The Union has not proved that the demands of its workmen of M/s. Goa Instruments Industries, Mapusa Industrial Estate, in the schedule attached to the Order of Reference are legal and justified. No order as to costs.

Dr. Renato de Noronha
Presiding Officer
Industrial Tribunal

IN THE INDUSTRIAL TRIBUNAL GOA, DAMAN AND DIU, PANAJI GOA

(Before Dr. Renato de Noronha, Hon'ble Presiding Officer)

Reference No.: AIT/3/74

1. Shri Mario Cabral e Sa —Workman/Party I

V/s.

1. M/s. Polygot Publications —Employer/Party II

Employer/Party II represented by Shri Ramesh Desai, Labour Advisor.

Panaji. Dated: 1-8-1983

AWARD

The Govt. of Goa, Daman & Diu, by its Order No. CLE/1/ID (83)/74/IT-26/73-74/1045, dated 29th August, 1974, has referred for adjudication by this Tribunal an industrial dispute between the above parties. The schedule annexed to the order of reference reads as follows:

"Whether the action of the Management of M/s. Polygot Publications, Rua Jose Falcao, Panjim, Goa, in refusing employment to Shri M. R. Cabral e Sa, Workman, with effect from 11th October, 1978, was legal and justified?

If not, to what relief the said workman is entitled and from what date?"

2. The case of the Workman/Party I, as per his statement of claim, is that he was engaged by the Employer/Party II to work from March 1972 and was paid from 1st May 1972 till 17-10-1973. He was refused employment from 11-10-1973. He has prayed that the Tribunal should decide:

a) That he was refused employment from 11-10-1973;

b) That he should be deemed to be in employment;

c) That he is entitled to all benefits as Editor, Printer and Publisher in terms of salary, facilities and perquisites or any benefits which are monetary benefits;

d) That the employer, by their vindictive and illegal conduct, have caused the workman material and moral damage, mental anxiety and financial loss;

e) That, if it is the intention of the employer to now terminate his services, all terminal benefits due to him in all his capacities of work and employment should be made available to him and settled forthwith;

f) Since the employers have claimed that the notice served by them on 30-8-1973 was a retrenchment notice, the Tribunal should decide if the editor, printer and publisher can be at any time of the working of the paper and in view of the special requirements of law governing publication of the Newspaper be declared surplus or redundant within the legal meaning and import of the word retrenchment and, if not, whether the notice dated 30-8-1973 was malafide or not.

3. The employers, in their written statement, after giving a brief story of the case, have raised the following preliminary objections:

The order of reference in question is bad in law and not maintainable for the below mentioned reasons:

a) That the concerned employee is not a "workman" within the meaning of Section 2 of the I.D.A., 1947, in short, the Act or within the meaning of Section 2 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955.

b) That the appropriate Government, without any jurisdiction or in excess of its jurisdiction, has made the reference to this Hon'ble Tribunal.

c) That the reference made by the Appropriate Government is made without any application of mind.

d) That the dispute as referred to is an individual dispute and not an industrial dispute.

e) That the Appropriate Government have powers to refer an individual dispute to this Hon'ble Tribunal as if it is an industrial dispute strictly in the framework of Section 2A of the Act, and in this behalf it is submitted that Section 2A of the Act is not applicable in the instant case.

f) That the concerned employee, having resigned from the services, cannot invoke the provisions of Section 2A for the purpose of seeking reference u/s 10(1)(d) of the Act.

g) That the employer has not discharged, dismissed or retrenched the concerned employee from his services but merely accepted the resignation submitted by the concerned employee.

h) That the acceptance of resignation by the employer does not amount to dismissal, discharge, retrenchment or termination of services of an employee by the employer.

i) That this Hon'ble Tribunal has no jurisdiction to entertain the dispute under the provisions of the Act.

It is further submitted that the Workman/Party I sent his resignation on 17-10-1973, which was accepted by the employer by his letter dated 18-10-1973. Therefore, in law, there is no termination of services of the workman by discharge, dismissal or retrenchment by the employer.

On merits, it is submitted that, due to certain differences between the employer and the workman, a meeting was arranged on 17-10-1973; after a prolonged discussion in the said meeting, the workman tendered his resignation, which was accepted by the employer. After submitting his resignation and the same having been accepted, the workman has no right to raise an industrial dispute under the provisions of the Act. His claim for reinstatement with full back wages is also not tenable in law. Besides, the publication of the newspaper was closed down w.e.f. 23-12-1973 and so the question of reinstatement does not arise. In regard to the alleged terminal benefits, the workman has preferred an application under Section 33C(2) of the Act to the Labour Court. The claim made to the extent of the terminal benefits in the claim statement cannot be adjudicated by the Tribunal under the Order of Reference. In any event, the employer denies any liabilities to pay the alleged terminal benefits. Once a resignation is accepted in substance and infact, as desired by the employee, the latter has no say in deciding in what manner his resignation should be accepted by the employer, nor the employee can say that the resignation is deemed to have been withdrawn only because the manner in which it was accepted was not to the liking of the employee. It is finally submitted that the 1st proviso to Section 5(i) of the Working Journalists Act fixes a maximum limit on gratuity payment to the working journalist if he has voluntarily resigned on any ground other than on the ground of conscience, whereas no such maximum limit is fixed if the resignation is on the ground of conscience, as contemplated under Section 5(1)(c) of that Act. To give a meaning to Section 5(2) that the Tribunal has got jurisdiction to adjudicate the issue of resignation as an industrial dispute while disposing of the reference under Section 10(1)(d), read with Section 2A of the Act, and hold that the resignation on the ground of conscience amounts to discharge of services and to grant a relief other than what is provided under the provisions of Section 5 of the Working Journalists Act would be erroneous and bad in law.

4. Both the parties filed their draft issues, on the basis of which my Ld. Predecessor Dr. Coelho framed his draft issues. Arguments of the representatives of both the parties were heard by Dr. Coelho on this draft and the matter kept for order. When I took over, the file was kept for Order. Fresh Arguments of the parties on the draft issues were heard and order was passed by me on 12-7-1982, which reads as follows: "Issue No. 1 to 4 in the draft to be framed as preliminary issues, as they are connected with the jurisdiction of this Tribunal. The other issues will be framed later on."

Only the opponent filed its list of evidence, led its evidence and argued the matter. Workman/Party I remained absent and the case proceeded ex-parte against him.

5. The opponent examined one Antonio Rodrigues, Administration Manager of Polygot Publications. He has proved the letter dated 17-10-1973 written by Party I, Shri Cabral e Sa, to Shri Erasmo Sequeira, Partner of the employer/ /party II (Exh E-1). He has also produced the copy of the letter dated 18-10-1973, written by Shri Erasmo Sequeira to Shri Cabral e Sa and also the letter of the same date, written by Shri Cabral e Sa to Shri Erasmo Sequeira. This last letter would proves that Shri Cabral e Sa has received the letter of Shri Erasmo Sequeira dated 18-10-1973 (both letters colly. marked as Exh. E-2). He has further produced the letter dated 4-12-1973 sent by Shri Cabral e Sa to Shri Erasmo Sequeira and the reply of Shri Sequeira dated 20-12-73 to the said letter (colly. marked as Exh. E-3).

6. Issue No. 1 to 4 in the draft, which were declared as preliminary, read as follows:

"1. Do the employer/party II prove that this reference is bad in law because it has been made by the Government without any jurisdiction or in excess of its jurisdiction and without any application of mind?

2. Do the employers/party II prove that the Reference is not maintainable as the Government is not entitled to refer for adjudication this individual dispute as an Industrial dispute u/s 2A of Industrial Disputes Act, 1947 (hereinafter called IDA)?

3. Do the Employer/Party II prove that the Applicant cannot invoke S.2A I.D.A., for the purpose of seeking a Reference u/s 10(I)(D), IDA in view of his resignation?

4. Do the Employers/Party II prove that this Tribunal has no jurisdiction to entertain this Reference?"

7. Issue No. 2 was not pressed by the Ld. Rep. of the employer and so it was dropped. So far the other three issues are concerned, the Ld. Rep. of the employer has advanced the following arguments:

i) In the Order of reference the words used in the schedule are:

"In refusing employment to Shri Cabral e Sa". In this connection, refusal in employing or employment does not necessarily mean termination of services. It may be noted that refusal of employment if on account of lay off or lock out or suspension pending inquiry cannot be construed as termination of services of the workmen by an employer, as contemplated under Section 2A of the Act. Similarly, accepting resignation submitted by the workmen cannot and should not be construed as termination of services of the workmen by an employer thereby invoking Section 2A of the Act. In the instant case, the workman has resigned.

ii) Party/i having realised the above legal position has fallen back upon his contention raised in his letter dated 4-11-73 (vide annex. 'C' to the written statement).

iii) In the instant case, the workman has resigned on October 1973, effective from 5.30 p.m. on that day and this resignation was accepted on the spot. Now he contends that he resigned on the ground of conscience and, since the ground was not accepted but only the resignation, there is a dispute between him and the employer. He further contends that, in view of sub-section 2 of Section 5 of the Working Journalists (Conditions and Services) and Miscellaneous Provisions Act, 1955, hereinafter called the Working Journalists Act, such dispute becomes an industrial dispute and, as such, this court is competent to adjudicate the present reference. The employer's submission is that the deeming provision under sub-section 2 of Section 5 of the Working Journalists Act will have to be given reasonable meaning or interpretation, keeping in mind the subject matter of legislation and the object of it and in the context of Section 5 of that Act. This Section 5 is enacted to confer the benefit of gratuity at a prescribed rate to working journalists. It has provided more beneficial rate of gratuity in case a working journalist resigns on the ground of conscience. If any dispute arises in regard to the rate of payment of gratuity because of dispute whether or not resignation is on the ground of conscience, such dispute can be adjudicated by this court as it is an industrial dispute to decide the limited issue of rate of gratuity payment. In normal course, such a dispute would not be adjudicated because of its character of an individual dispute under the Act. Therefore, the purpose of deeming provision under sub-section (2) of Sec. 5 of the Working Journalists Act is very clear and this court cannot enlarge the scope to convert it as if it is an industrial dispute under Section 2A of the Act.

8. The dispute in question is, undoubtedly, an individual dispute. Section 2A of the Act, which provides under what circumstance individual disputes are to be deemed as industrial disputes, reads as follows: "Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or

arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

9. The wording used in the order of reference is "Refusing employment to Shri Mario Cabral e Sa". Employer can refuse employment to the workman on many grounds, as it is rightly contended by the employer's rep., and in all such cases there may not be termination of services for the purpose of Section 2A of the Act. In the instant case, the refusal of employment by the employer is based on the resignation letter submitted by the workman party I and accepted by the employer. If such a resignation is voluntary, it cannot amount, in my opinion, to *termination of service by the employer* for the purpose of Section 2A of the Act, but if it was obtained by the employer by fraudulent means, as contended by the workman, then it would certainly amount to termination of service, because resignation, by its nature, is a voluntary act and one cannot speak of resignation when the employee has not applied for it of his own free will i.e. without being deceived or threatened by the employer. In case of voluntary resignation, it is not the employer who terminates the services of the employee, but the employee himself who puts an end to his services, with the consent of the employer. Being so, such case does not come within the purview of Section 2A of the Act.

10. The employer has proved Exh. E-1, which is the letter of resignation dated 17-10-73, signed by the workman. There is nothing in this letter to suggest that the resignation was obtained by the employer by deceitful means or by threats. On the contrary, from the terms of the said letter it is clear that the workman/party I has resigned because of divergent opinion on the editorship of the "Goa Monitor".

11. Exh. E-2 colly. proved by the employer are the two letters, one dated 18-10-1973 of the employer accepting the resignation of the workman, not on the grounds mentioned by the workman in Exh. E-1 but on a different ground mentioned therein and enclosing cheques in full and final settlement of all the dues; and the other letter, dated 18-7-1973, is of the workman to the employer, accepting the cheques under protest, as he *does not agree with the calculations* made by the employer. The last portion of this letter reads as follows: "I have perused your letter and I find that you made several statements which required denials, explanations, counter statements etc.

You will have my detailed reply shortly".

In this letter, the workman has not, in clear terms, reacted to the acceptance of the resignation by the employer on a ground different from the one put in by him in his letter, but only vaguely alleged that there are in the letter some statements wich require denials, explanations, counter statements etc. and that detailed reply will follow shortly. This reply is the letter dated 4.12.1973 of the workman to the employer (Exh. E-3 colly.) In this letter, the workman, after explaining the delay in writing the said letter, for the first time raises the question that he had submitted his resignation because the employer gave him to understand that he was facing several difficulties and incase he submitted his resignation, he, the employer, would make a generous settlement, on the basis of his letter dated 9-10-1973, and adds that the action of the employer in accepting the resignation and not the ground amounts to discharge or unilateral termination of services.

This letter was replied by the employer on 20-12-1973 (Exh E-3 colly.) as an after thought.

12. Since the letter of resignation Exh. E-1 by itself does not suggest that there was an element of deceit or compulsion by the employer to obtain the resignation of the workman and since the workman did not lead any evidence to prove such deceit or compulsion, we have to assume that the resignation of the workman was voluntary. Being voluntary, it cannot amount to termination of services for the purpose of Section 2A of the Act. Hence, there was no industrial dispute which the Government could submit for adjudication of this Tribunal, as it is rightly contended by the employer. The order of reference is, therefore, in so far this ground is concerned, without jurisdiction and, as such, bad in law.

13. Let us consider now whether under section 5(2) of the Working Journalists Act there would be an industrial dispute which this Tribunal is competent to dispose of.

Section 5(1)(b) and (c) of the Working Journalists Act read as follows:

(b) Where: "Any working journalist has been in continuous service, whether before or after the commencement of this Act, for not less than ten years in any newspaper establishment, and he voluntarily resigns on or after the 1st day of July, 1961, from service in that newspaper establishment on any ground whatsoever other than on the ground of conscience; or

(c) Any working journalist has been in continuous service, whether before or after the commencement of this Act, for not less than three years in any newspaper establishment, and he voluntarily resigns on or after the 1st day of July 1961 from service in that establishment on the ground of conscience;.....

The working journalist or, in the case of his death, his nominee or nominees or, if there is no nomination in force at the time of the death of the working journalist, his family, as the case may be, shall, without prejudice to any benefits or rights accruing under the Industrial Disputes Act 1947, be paid, on such termination, retirement, resignation or death, by the employer in relation to that establishment gratuity which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months; Provided that in the case of working journalist referred to in clause (b) the total amount of gratuity that shall be payable to him shall not exceed twelve and half months' average pay:"

Then comes sub-section 2 of Section 5 which reads as follows:

"Any dispute whether a working journalist has voluntarily resigned from service in any newspaper establishment on the ground of conscience shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947 or any corresponding law relating to investigation and settlement of industrial disputes in force in any State."

From the above quoted provisions it is clear that the Working Journalists Act has considered as an industrial dispute within the meaning of the Act a dispute in respect of the fact whether a Working Journalist has voluntarily resigned from services on the ground of conscience or on a different ground. The ground of resignation, whether it is conscience or any other, is relevant for the purpose of Section 5(1)(b) & (c) because the provision has fixed a limit to the gratuity payable to such Journalists, depending on such ground.

14. It is well settled today that the Industrial Tribunal cannot travel beyond the terms of the order of reference. The order of reference in question was made by the Govt. under section 10(1)(d), read with section 7A of the Act, and refers only to the refusal of the employment by the employer. It is silent about the resignation and its grounds. Not even the provision of the Working Journalist's Act has been invoked in the order of reference. Being so, although the dispute regarding the ground of resignation, whether it is conscience or otherwise may be an industrial dispute, this Tribunal cannot enter into its appreciation, because the order of reference has not made any mention of such dispute.

15. In the premises above, I hold that the order of reference, as it is, is bad in law and so this Tribunal has no jurisdiction to enter into its appreciation. Regarding the provisions of the Working Journalists Act, invoked by the workman/Party I, although an industrial dispute under the said provision is within the jurisdiction of the Industrial Tribunal, this Tribunal cannot enter into its appreciation because the Order of Reference in question has not referred to it.

In the circumstances of the case, I leave each party to bear N. P. its own costs.

Dr. Renato de Noronha
Presiding Officer
Industrial Tribunal

IN THE LABOUR COURT GOA, DAMAN AND DIU, PANAJI GOA.

(Before Dr. Renato de Noronha, Hon'ble Presiding Officer)

Application No. LCC/18/80

1. Shri Vithal Salgaonkar and 9 others — Applicants.

V/s.

1. Shri D. B. Rege and Shri R. G. Nadkarni — Opponents.

Applicants represented by Adv. A. Nigalye.

Opponents represented by Adv. P. Nerulkar.

Panaji, Dated: 3-8-1983

AWARD

In this application filed by the above applicants against the above opponents, after reply was filed by the opponents, the parties agreed to settle partly the matter in dispute and, on the basis of this settlement, my Ld. Predecessor, Dr. Coelho, delivered an Interim Award on 18-7-1980, directing the opponents to pay to the applicants the total sum of Rs. 7,785/64, as accepted by them, in two instalments, and stating that the matter be proceeded with in Court to adjudicate upon the rest of the claim which does not stand settled by the above agreement.

2. The following issue was framed by the Court:

"Whether the applicants prove that they are entitled to recover from the opponents the amounts claimed in the application, with the deduction of what has been paid to them under the settlement arrived at in this court on 18-7-1980?"

3. On the date fixed for applicant's evidence, the case was adjourned at the request of the applicant's representative and he was warned that no further adjournment would be considered. Inspite of this, on the next date, the applicant's Advocate moved an application asking for adjournment, which request was rejected by the Court and the applicant's evidence was declared closed. As the Opponent's representative has failed to attend the Court from the time issues were framed, inspite of being duly notified, opportunity was given to the applicant's Advocate to argue the matter, which opportunity he did not avail of, and the matter was kept for Award.

4. Since it was for the applicants to prove the rest of their claim which is not admitted by the opponents and is not covered by the settlement referred to above, and since they have failed to lead any evidence in this connection, I pass the following order:

ORDER

The Interim Award dated 18-7-1980 delivered by the then Presiding Officer, Dr. Coelho, is hereby made final and the rest of the claim of the applicant not covered by the said Award is hereby dismissed with no Order as to costs.

As the Interim Award referred to above has not been sent to the Government for publication, I direct that it be reproduced here below as forming part of this Award and then the entire Award sent to the Government for publication.

"IN THE LABOUR COURT GOA, DAMAN AND DIU, PANAJI GOA.

(Before Dr. J. J. Coelho, Hon'ble Presiding Officer)

Application No. LCC/18/80

Vithal Salgaonkar and nine others — Applicant

V/s.

D. B. Rege and R. G. Nadkarni — Opponent

INTERIM AWARD

This is an application U/S 33(C)(2) of the Industrial Disputes Act, 1947 (hereinafter called 'The Act') filed by Vithal Salgaonkar and nine other Workmen of M/s. Reena Industries, Mapusa Industrial Estate, Mapusa, Goa, against S/Shri D. B. Rege and R. G. Nadkarni, Partners of the same firm which is having its office at Duler of Mapusa.

2. The Application is for recovery of the total amount of Rs. 11873.44 p. due by the Opponents to the Applicants. This amount is of delayed Wages and Overtime Allowances of the Applicants as shown in Schedule 'B' to the Application. It is alleged that the Opponents accepted to pay the above amount as per Settlement dated 25-1-1980 recorded by the Asstt. Labour Commissioner.

3. The amounts claimed individually are as follows:

1. Vithal Salgaokar	—	Rs.	2601.92
2. Santosh Naik	—	Rs.	2045.09
3 Prabhakar Madkaiker	—	Rs.	1757.30
4. Prakash Harmalkar	—	Rs.	1316.56
5. Shyam Satardekar	—	Rs.	1188.84
6. Digamber Gadekar	—	Rs.	933.73
7. Shivanand Shirodkar	—	Rs.	600.00
8. Anand Pednekar	—	Rs.	350.00
9. Anthony D'Souza	—	Rs.	300.00
10. Ashok Mahale	—	Rs.	780.00
Total	—	Rs.	11873.44

4. The grievancy of the Applicants is that the amounts claimed are as per the above Settlement and however, the Opponents did not pay them. Hence, this Application for recovery.

5. The Opponents admitted partly the claim in their Written Statement. They admitted their liability to pay Salary for the months of October and December, 1979, and Overtime for the months of August and September, 1979, claimed by the Applicants 1 to 6. The amount of Salaries that they accepted to be due to the Applicants are as follows:

1. Vithal Salgaokar	—	Rs.	1000/-
2. Santosh Naik	—	Rs.	800/-
3. Prabhakar Madkaikar	—	Rs.	600/-
4. Prakash Harmalkar	—	Rs.	550/-
5. Shyam Satardekar	—	Rs.	550/-
6. Digamber Gadekar	—	Rs.	350/-
Total	—	Rs.	3850/-

They also accepted their liability to pay the Overtime amount of Rs. 478.14 as per the claim.

But they asked for deduction form the amount claimed of 5 days Salary during which period the Applicants were absent from duty during Ganesh Chaturti and in respect of which they had undertaken to do work after duty hours on resuming duties so as to compensate the Opponents from the losses suffered. The amounts to be deducted are as shown below:

1. Vithal Salgaokar (5 days @ Rs. 15 p.d.)	Rs.	80.00
2. Santosh Naik (5 days @ Rs. 13 p.d.	Rs.	65.00
3. Prabhakar Madkaiker (5 days @ Rs. 10 p.d.)	Rs.	50.00
4. Prakash Harmalkar (5 days @ Rs. 8 p.d.)	Rs.	40.00
5. Shyam Satardekar (5 days @ Rs. 7 p.d.)	Rs.	35.00
6 Digamber Gadekar (5 days @ Rs. 5.50 p.d.)	Rs.	27.50
Total	Rs.	297.50

The Opponents also accepted the liability for paying the Salary of the Applicants for the month of January, 1979, except of the Applicants at Sr. No. 1 and 2 as detailed in Annexure 'B' in the total of Rs. 2075/-.

Thus, the Opponents accepted the liability for the amount of Rs. 6125.64 and requested time for making such payment.

They alleged that it was due to non-co-operation of the Applicants who did not report for duty by 1st February, 1980, as requested to do under their letter dated 14-1-1980, that the payment could not be made as provided in Settlement executed before the Commissioner for Labour.

6. Thereafter, the Applicants filed their Rejoinder and date was given for framing Issues.

7. In the course of the proceedings before this Court on 7th instant a proposal was mooted out for settling amicably the matter and for this purpose discussions were called for in this Court on 9th and 18th instant as a result of which an Agreement between the parties emerged out which has been recorded in the Memorandum of Settlement filed on record. In terms of this Settlement, the Opponents agreed to pay to the Applicants the total sum of Rs. 7785.64 which is the amount accepted by them during the discussions in this Court, in two instalments, one payable on 24th instant and the other on or before 8th September, 1980. It was also agreed that this Court will proceed to adjudicate the rest of the claim which does not stand settled by the above Agreement.

8. I find that the Settlement is absolutely reasonable and in the interest of industrial peace and justice, since it has allowed on one side, the Workers to resume duty and the Factory work to proceed on undistrubed so as to permit the Opponents to complete the unfinished work and recover the amount due to them by their clients (and this was the crux of the matter i. e. the Opponents could not pay to the Applicants because they did not report for duty and complete the work, and because the work was not complete, the Opponents could not claim the payment from their clients) and on the other side, allowed to recover a part of the Wages claimed with a reasonable expectation of in this process of resumption of work and normal flow of productive activity, the rest of the claim being amicably settled and normalcy restored in the relationship between the Employers and their Workmen.

9. In the circumstance, the following Order is passed:

ORDER

Interim Award in terms of the Settlement as per the Memorandum of Settlement on record which will form part of this Interim Award.

No Order as to costs.

Sd/-

Panaji. (Dr. J. J. Coelho)

18-7-80. Presiding Officer
Labour Court".

This Interim Award was accompanied by a Memorandum of Settlement forming part of the Interim Award which reads as follows:

"We, the undersigned applicants do hereby declare that we have received the amount mentioned hereinbelow against our names on 24-7-1980 in terms of the Settlement arrived at on 18-7-1980 in application No. LCC/18/ /1980 filed by us in the Hon'ble Labour Court at Panaji. We have received the said amount from Shri D. B. Rege and Shri R. G. Nadkarni, Partners of M/s. Reena Industries, Mapusa Goa.

1. Vithal Salgaokar	Sd/-	—	Rs.	1,260-96
2. Santosh Naik	Sd/-	—	Rs.	990-04
3. Prabhakar Madkaikar	Sd/-	—	Rs.	528-65
4. Prakash Harmalkar	Sd/-	—	Rs.	388-28
5. Sham Satardekar	Sd/-	—	Rs.	351-92
6. Digambar Gadekar	Sd/-	—	Rs.	278-11
7. Ashok Mahale	Sd/-	—	Rs.	90-00

Seen

Sd/-

(Dr. J. J. Coelho) *Dr. Renato de Noronha*

24-7-80" Presiding Officer
Labour Court

Order

No. 28/2/79-ILD

The following Awards given by the Industrial Tribunal, Goa, Daman and Diu are hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Administrator of Goa, Daman and Diu.

S. D. Sadhale, Under Secretary (Industries and Labour).

Panaji, 5th September, 1983.

IN THE LABOUR COURT, GOA, DAMAN & DIU, PANAJI GOA

(Before Dr. Renato de Noronha, Hon'ble Presiding Officer)

Application No.: LCC/18/83

1. Shri Gurudas Sawant — Applicant

V/s.

1. M/s. V. D. Verlekar & Sons — Opponent

Panaji. Dated: 19-8-1983.

AWARD

This is an application under Section 33C(2) of the I. D. A., 1947, in short the Act, filed by the above applicant against the above opponent claiming from the latter the amount of Rs. 9,105/- as per the details given in the annexure and, in addition, also an amount which has not been specified, towards overtime for having worked minimum 2 hours overtime daily.

It is applicant's case that he was working for the opponent as Sales man from about 1945 for the last about 38 years and had to resign w.e.f. 6-5-1983, due to harassment caused by the partner Shri Vishwanath Verlekar. His last wages drawn were Rs. 250/- per month, all inclusive. He has made his claim under the provision of Section 39 of the Shops and Establishments Act, 1973.

2. Before any written statement or counter was filed by the opponent, the parties settled the matter amicably and filed before this court the settlement terms which are as follows, praying that a consent award be passed accordingly:

"TERMS OF SETTLEMENT

a) The Respondents shall pay a sum of Rs. 6,500/- (Rupees six thousand and five hundred only) to the applicant in full and final settlement of all the legal dues of the Applicant.

b) The Respondents shall pay the said amount to the Applicant on filing this application before this Hon'ble Tribunal.

c) The Applicant agrees that in view of Clause (a) above he has no dues of whatsoever nature against the Respondents.

d) The parties agree that the parties shall have no claims of whotsoever nature against each other."

3. The above terms of settlement are just and fair to both the parties and, hence, I accept them and pass the following order:

ORDER

Consent Award in terms of the above settlement is hereby made and the matter is disposed off. No order as to costs.

Dr. Renato de Noronha
Presiding Officer
Labour Court.

IN THE LABOUR COURT GOA, DAMAN AND DIU, PANAJI GOA

(Before Dr. Renato de Noronha, Hon'ble Presiding Officer)

Application No.: LCC/10/81

1. Shri Jayant Shripad Dani — Applicant

V/s.

1. The Chairman,
Radhakrishna Vidhyalaya, Bicholim — Opponents

2. The Director,
Directorate of Education, Panaji

Opponent No. 1 represented by Adv. Amrut Kansar, in his capacity as Chairman.

Panaji. Dated: 12-8-1983

AWARD

This is an application filed under Section 33C(2) of the I.D.A., 1947, in short the Act, by the above applicant against

the above opponents, claiming from them the total amount of Rs. 18,849/30, as per the details given in the annexure.

3. It is applicant's case that he was appointed as Asstt. Teacher in Radhakrishna Vidhyalaya, Bicholim, on 14-6-1973 and his services were illegally terminated by the Management on 5-6-1978. The case was then referred to the Directorate of Education and it was decided by the Director on 4-12-1978 to reinstate him in services. On 4-12-1978, he was re-appointed on a fresh pay scale. For regularization of his services the Dept. of Education asked him to apply for half pay leave and extraordinary leave from 5-6-1978 to 3-11-1978, which he did, but the Management has not taken any action on his application, inspite of the direction given by the Dept. of Education. The school is aided by the Government.

3. The opponent no. 1, in its written statement, has raised the preliminary objection in respect of the jurisdiction of the Court to entertain the application, on the ground that the applicant is not a 'Workman' and the activity is not 'Industry' within the meaning of the Act. He has further stated that the application is also not maintainable, as it is not based on an existing right but on hypothetical grounds and also because the applicant has not exhausted all the remedies available to him before approaching this Court.

On merits, it is contended that the termination of services of the applicant is legal and the Dept. of Education has not given any decision on the reference of his case made by the applicant to the said Department. It is further stated that the applicant is not entitled to the amounts claimed.

4. No written statement was filed by opponent No. 2.

5. The following preliminary issues were framed, on which only the applicant led his evidence:

"1. Whether the applicant proves that his claim is based on an existing right?

2. Whether the opponent proves that this Court has no jurisdiction to entertain this application, as the applicant is not a "workman" and his activity not an "industry", as described in the Industrial Disputes Act, 1947?"

6. Since Opponent No. 1 did not lead any evidence nor try to substantiate the preliminary objections raised in its written statement, which are subject matter of issue No. 2, I shall consider the same issue as dropped by the opponent.

7. In so far issue No. 1 is concerned:

It is the contention of the applicant that his application is based on an existing right, as the Dept. of Education, which was approached by the applicant, has decided that he should be reinstated and his period of absence legalized and considered as leave. In support of this contention, he has produced the correspondence exchanged between the Department and the Management of the School, and, among them. Exhs. A-4, A-5, A-8, A-9 and A-10.

In Exh. A-4, dated 4-12-1978, the Dept. of Education has requested the Management to restore the staff position as it prevailed with the admissible eight divisions of the school.

In Exh. A-5, dated 28-11-1979, the Department has stated that they have no objection to accept the applicant's request for extraordinary leave from 5-6-1978 to 3-11-1978 so as to give him the benefit of having his past services regularised. This letter ends as follows: "You should, therefore, take expeditious action under intimation to this office within 15 days of the receipt of this letter".

In Exh. A-8, dated 23-10-1980, the Education Department has requested the Head Master of the school to consider the applicant's request for half pay leave from 5-6-1978 to 12-9-1978 and regularize his absence from duty.

Exh A-9, dated 16-2-1981 and Exh. A-10, dated 7-1-1981, are also letters of the Department of Education to the Management, connected with the regularization of the leave of the applicant.

8. The Ld. Rep. of the Opponent No. 1 argues that, in the letter Exh A-4, the Department has not *directed* the Opponent to reinstate the applicant but has made only a *request*, as it is clear from the word "Request" used in the said letter.

9. The applicant has not proved that, under the provisions of the Grant-In-Aid-Code, the Department of Education can *direct* the Management of an aided school to reinstate a teacher, whose services, according to them, have been illegally terminated by the Management and what action the department is empowered to take against the Management, in case the latter does not comply with the directions of the Department. Similarly, what action the Department can take, incase the Management refuses to consider the request for leave of a teacher, inspite of an order of the Department in this direction.

In the instant case, the fact that the Management has not cared to comply with the "request" or "direction" of the department for the reinstatement of the applicant and also for the regularization of his absence as leave and that the Department has not taken any action against the Management for non compliance of such direction would strengthen the conclusion that there was no order given by the department, but only a "request" made to the Management, both regarding the reinstatement and regularization of the period of absence of the applicant, as contended by the Opponent No. 1's representative.

10. In any event, if the Educational Dept. could issue such directions to an aided school and see that they are complied with, the Department ought to have done so. The applicant could not approach the Labour Court without having his title clearly defined by the Education Department, if this Department was empowered to do so.

11. It is well settled today that an application to the Labour Court under Section 33C of the Act is in the nature of execution proceedings and should be based on an existing right. If the right itself is in dispute, the applicant has to approach the Government and get a reference to the Industrial Tribunal for the adjudication of this dispute. In the instant case, the claim of the applicant is based on his illegal termination of services, which illegality has not been clearly declared by the proper authority.

12. In view of the above, I pass the following Order:

ORDER

The Labour Court has no jurisdiction to entertain the applicant's application, which is not based on an existing right. Hence, it is dismissed. In the circumstances of the case, I leave each party to bear its own costs.

Dr. Benato de Noronha
Presiding Officer
Labour Court.

Finance Department (Revenue and Control)

Notification

No. 5/21/83-Fin (R&C)

In exercise of the powers conferred by section 10A of the Goa, Daman and Diu Sales Tax Act, 1964 (4 of 1964), the Government of Goa, Daman and Diu being satisfied that it is necessary to do so in public interest, hereby exempts from the payment of sales tax and additional tax leviable under the said Act on the sale of Matador Hearse Van by M/s GOA Automotive, Vasco-da-Gama to the "Provedoria" (Institute of Public Assistance), established under Legislative Diploma No. 1984 dated 14-4-1960.

By order and in the name of the Administrator of Goa, Daman and Diu.

Subhash V. Elekar, Under Secretary (Finance).

Panaji, 7th September, 1983.

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